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CRL.A.(MD).No.761 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.10.2025

PRONOUNCED ON : 25.10.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No.761 of 2022

T.Thangamangani

.. Appellant/Complainant

Vs.

K.Govindaraj

.. Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 Cr.P.C, to call for the records in C.C.No.127 of 2013, dated 14.06.2016, on the file of the Judicial Magistrate, Fast Track Court, (Magisterial Level), Srivilliputhur and set aside the same by convicting the respondent/complainant.

For Appellant : Ms.S.Meena
for Mr.M.Kartheeswaran

For Respondent : Mr.N.Mohideen Basha
Public Prosecutor



JUDGMENT

WEB COPY This Criminal Appeal is directed against the judgment made in C.C.No. 127 of 2013, dated 14.06.2016, on the file of the Judicial Magistrate, Fast Track Court, (Magisterial Level), Srivilliputhur in acquitting the respondent/complainant for the offence under Section 138 r/w 142 of the Negotiable Instruments Act.

2. The appellant who is the complainant filed a private complaint under Section 200 Cr.P.c., against the respondent/accused for the offence under Section 138 r/w 142 of the Negotiable Instruments Act.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the trial Court.

4. The case of the complainant is that the complainant and the accused are friends, that the accused used to borrow the loans from the complainant and return the same, that the accused borrowed a sum of Rs.10,00,000/- on 22.09.2013 from the complainant for his business purpose, family expenses and to clear the sundry debts, agreeing to return the same within a month, that the complainant approached the accused on 21.10.2013 and reminded him that he had to repay the loan on the next day, that the accused informed the complainant



that he was not possessed with such amount of money, but the money is available in his bank account, agreed to issue a cheque for discharging the said loan and accordingly issued a cheque dated 22.10.2013 drawn on State Bank of India, Rajapalayam for Rs.10,00,000/-, that the complainant had presented the said cheque for collection on 23.10.2013 through his bankers Indian Bank, Srivilliputhur branch, but the cheque was returned for want of sufficient funds in the bank account of the accused, vide bank memo dated 23.10.2013, that the complainant has then sent a legal notice dated 31.10.2013 to the accused directing him to pay the amount covered by the cheque and the accused having received the intimation regarding the legal notice, refused to claim and managed to return with an endorsement "Door Locked, Intimation Served, Unclaimed" and that since the accused failed to pay the amount within the stipulated time, the complainant was constrained to file the above complaint for the alleged offence under Section 138 r/w 142 of the Negotiable Instruments Act.

5. The learned Judicial Magistrate, upon receiving the complaint recorded the sworn statement of the complainant and on perusing the records, upon satisfied that there existed a prima facie case, took the case on file in C.C.No.127 of 2013 for the offence under Section 138 of the Negotiable Instruments Act and ordered for issuance of summons to the accused. After appearance of the accused, the copies of the records were furnished to him under Section 207



Cr.P.C., on free of costs. When the accused was questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty. During trial, the complainant examined himself as P.W.1 and one Alliraja as P.W.2 and exhibited 5 documents as Exs.P.1 to P.5. The accused adduced neither oral nor documentary evidence.

6. The learned Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned judgment dated 14.06.2016, holding that the complainant has not proved the offence under Section 138 of the Negotiable Instruments Act as against the accused beyond reasonable doubt, acquitted him under Section 255(1) Cr.P.C. Challenging the impugned judgment of acquittal, the complainant has preferred the present Criminal Appeal.

7. Whether the impugned judgment of acquittal passed in C.C.No.127 of 2013, dated 14.06.2016, on the file of the Judicial Magistrate, Fast Track Court, (Magisterial Level), Srivilliputhur is liable to be set aside? is the point for consideration.



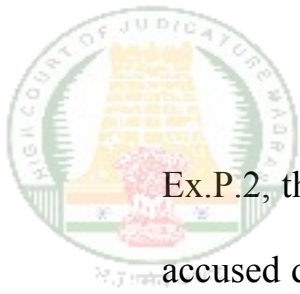
8. Before entering into further discussion, it is necessary to refer Sections 118 (a) and 139 of the Negotiable Instruments Act, which deal with the statutory presumption :

“118. ...

(a) of consideration ; that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;

139.Presumption in favour of holder. It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”

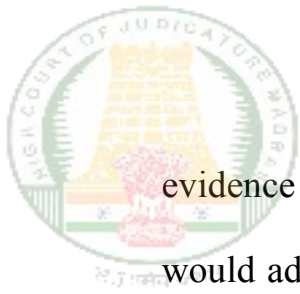
9. It is the specific case of the complainant that the accused being a friend borrowed a sum of Rs.10,00,000/- on 22.09.2013 for his business purpose and to meet out his family expenses and to clear the sundry debts, agreeing to repay the same within a month and that when the accused was reminded by the complainant on 21.10.2013 that he had to repay the loan amount, the accused gave a cheque dated 22.10.2013 drawn on State Bank of India, Rajapalayam branch for Rs.10,00,000/- under Ex.P.1 for discharging the loan due by him. It is the further case of the complainant that when the cheque was presented for collection through his banker, Indian Bank, Srivilliputhur Branch, the same was returned dishonoured as funds insufficient, vide memo dated 23.10.2013 under



Ex.P.2, that the complainant has then sent a legal notice dated 31.10.2013 to the accused demanding the payment of amount covered by the cheque under Ex.P.3, but the accused after getting intimation about the notice, managed to return the same as unserved under Ex.P.4 and since the accused has not complied with the notice demand, the complainant was constrained to file the above complaint.

10. The defence of the accused as evident from the cross-examination made to P.W.1 and P.W.2 is that the complainant is unknown to the accused, that the accused never borrowed any amount from the complainant, that the accused never issued the complaint mentioned cheque, that there is material alteration in the date of cheque, which renders the cheque as void instrument and that the statutory notice was not served on the accused in his correct address and hence there was no cause of action to file the complaint.

11. As rightly contended by the learned Counsel for the complainant, the accused has nowhere denied or disputed his signature found in Ex.P.1 – cheque. During cross-examination of P.W.1, it was suggested that the disputed cheque was issued to some other person. But while concluding the cross-examination, it was suggested that the accused was having chit transactions with one Chit Manohara Raja and that the complainant has filed the above false case using the documents given by the said Chit Manohara Raja. No doubt, P.W.1 in his



evidence would admit that he had written his name in Ex.P.1 cheque. P.W.1 would add that the accused had subscribed his signature and gave the cheque to him.

12. The cross-examination of P.W.1 by the accused, as rightly pointed out by the learned Counsel for the complainant, reveals an indirect admission that the disputed cheque under Ex.P.1 belongs to the accused and was issued with his signature. As already pointed out, it is pertinent to note that P.W.1 has given evidence reiterating the complaint contentions and deposed about the liability of the accused, issuance of cheque therefor, dishonour of cheque, issuance of statutory notice and the failure of the accused to pay the amount within the stipulated time.

13. Considering the evidence of P.W.1 and cross-examination, this Court draws the presumption under Section 139 and 118 of the Negotiable Instruments Act, which is always rebuttal in nature. It is settled law that the accused in order to rebut the presumption drawn in favour of the complainant under Section 118 and 139 of Negotiable Instruments Act, is not required to adduce any evidence and he can very well prove his probable defence through evidence adduced by the complainant and that the standard of proof required is of preponderance of probabilities.



14. The defence has taken a stand that the ink used for writing the contents of the cheque and the ink used for subscribing the signature are different and that the blank cheque came to be issued in favour of some other person and not to the complainant. P.W.1 would deny the suggestion that the ink used for writing the contents and for signature are different but P.W.2 – Bank Manager would say that the ink is different.

15. Considering the above, it is clear that the accused has taken a defence that the contents of Ex.P.1 were not filled by him and the ink used for signing the cheque and for writing the contents differs. As rightly contended by the learned Counsel for the complainant, even assuming that there is a difference in ink, that will not advance the case of the accused.

16. At this juncture, it is necessary to refer the decision of this Court in ***Padmavathy Vs. M/s Sri Balaji Networks*** in ***Crl.R.C.(MD)No.523 of 2023, dated 30.06.2023***, while dealing with the scope of Section 20 of the Negotiable Instruments Act, has observed as follows:

“7. The learned Counsel for the complainant would submit that as per Section 20 of the Negotiable Instruments Act, the holder of the cheque either by himself or through any third party can very well fill up the blank cheques and it is necessary to refer Section 20 of the Negotiable Instruments Act hereunder for better appreciation;



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“Inchoate stamped instruments : Where one person signs and delivers to another a paper stamped in accordance with law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount instead by him to be paid to thereunder.”

8. As per Section 20 of the Negotiable Instruments Act, the holder in the due Course has every authority to complete the stamped instruments i.e., blank promissory note and bill of exchange, delivered to him after properly signing therein by the maker of the instruments and as such Section 20 of the Negotiable Instruments Act, will have no application to the blank cheques issued after signing by the drawer. But, at the same time, there is no law which mandates that the cheque shall be filled up by the drawer himself. Similarly, if a drawer of a cheque gives authority to the payee or holder in due course to fill up the cheque signed by him, then the payee or holder in due course can very well fill up the blank cheque by themselves or through a



stranger / third party, as there is no bar for the drawer of the cheque to give authority to the third person to fill up the cheque signed by him for the purpose of negotiating the same.

9. *The learned Counsel for the revision petitioner/accused has relied on the decision of the Division Bench of the Hon'ble Supreme Court in **T.Nagappa Vs. Y.R.Muralidhar** reported in 2008(2) Crimes 219 (SC) and the relevant passages are extracted hereunder:*

“ Code of Criminal Procedure 1973 – Section 243(2) r/w Article 21 of the Constitution of India – An accused has a right to fair trial and to adduce evidence for that purpose – Ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc.

Negotiable Instruments Act 1881 – Section 20 – Only a prima facie right, that too conditional, had been conferred upon the holder of the negotiable instrument – Request of the appellant for referring the cheque to Forensic examination was bona fide.”

10. *At this juncture, it is necessary to refer the recent judgment of the Hon'ble Supreme Court in **Oriental Bank Of Commerce vs Prabodh Kumar Tewari** reported in 2022 Live law SC 714, wherein it has been held as follows:*

“ Negotiable Instruments Act, 1881 – Sections 138, 139 - A drawer handing over a cheque signed by him is liable unless it is proved by adducing evidence at the trial that the cheque was not



in discharge of a debt or liability. The evidence of a hand-writing expert on whether the respondent had filled in the details in the cheque would be immaterial to determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application for adducing the evidence of the hand-writing expert. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.”

*11. In that decision, another judgment of the Three Judges Bench of the Hon'ble Supreme Court in **Kalamani Tex Vs. Balasubramanian** reported in 2021(5) SCC 283 was referred and wherein the Hon'ble Apex Court has reiterated the legal position settled in **Bir Singh Vs. Mukesh Kumar** reported in (2019)4 SCC 197, wherein it has been held as follows:*

*“14. In **Bir Singh v. Mukesh Kumar**, after discussing the settled line of precedent of this Court on this issue, a two-Judge Bench held:*

*33. A meaningful reading of the provisions of the **Negotiable Instruments Act** including, in particular, **Sections 20, 87 and 139**, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer.*



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If the cheque is otherwise valid, the penal provisions of [Section 138](#) would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

[...]

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under [Section 139](#) of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

(emphasis supplied)”

12. The above decisions are clearly applicable to the case on hand. In the present case, according to the petitioner, she has not written the contents of the cheque. As already pointed out, since it is not mandatory for the drawer to fill up the entire instrument by himself, no useful purpose would be served, if the disputed cheques are sent for expert opinion. Even assuming for argument sake, that the expert gives his opinion that the writings found in the cheque are not that of the petitioner, that by itself would not advance the case of the petitioner further. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of



a debt or in discharge of a liability and that the cheque presumption arises under Section 138 of the Negotiable Instruments Act. Section 139 of the said Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received it for the discharge, in whole or in part, of any debt or other liability. In case if the accused is able to raise a probable defence which creates doubts about the existence of a legally recoverable debt or liability, the prosecution can fail. The standard of proof for rebuttal of presumption under Section 139 of the Negotiable Instruments Act is guided by preponderance of probabilities. For deciding the above, the fact that the details in the cheque have been filled up not by the drawer, but by some other person, would be immaterial.”

17. As already pointed out, the de facto complainant would admit that he wrote his name in Ex.P1 cheque. Even assuming, for argument's sake, that the other contents of the cheque were not filled by the accused but by some other person, that is totally irrelevant.

18. The next contention of the accused is that there is a material alteration in the date of cheque, which renders the cheque itself void. Before proceeding further, it is necessary to refer Section 87 of the Negotiable Instruments Act, which is as follows:



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“87. Effect of material alteration.—Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.—And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

19. No doubt, the said provision is subject to provisions under Sections 20, 49, 86 and 125 of the Negotiable Instruments Act. According to the defence, the date of cheque was altered from 22.10.2003 to 22.10.2013 by changing “2003” to “2013” with different ink. Material alteration can be defined as any change to a key feature of the instruments, such as the date, the sum payable or time of payment without the consent of the original parties. The party claiming material alteration must prove it and consequently, rebut the legal presumption under Section 139 of the Negotiable Instruments Act that the cheque was issued for a legally enforceable debt.

20. In the present case, Ex.P.1 cheque has a printed year '200....' in the date column, with '22.10.2013' written on it. The accused claims the original date was '22.10.2003,' later altered to '2013.' However, as rightly contended by the learned Counsel for the complainant, the accused doesn't claim to have issued



the cheque with the date '22.10.2003' to the complainant or anyone else. The accused's stand implies the cheque's contents weren't written by him. Given the printed '200.....', it can be inferred the cheque was issued prior to 2010.

21. A perusal of Ex.P.1 shows 'No.1' written over the printed zero. Notably, the accused's banker didn't refuse to honour the cheque due to alleged overwriting or material alteration. Instead, Ex.P.1 was dishonoured due to insufficient funds. P.W.2, the Bank Manager, categorically stated the cheque was dishonoured for lack of sufficient funds, and Rs.204/- was debited from the accused's account for the dishonour.

22. P.W.2 in his cross-examination would say that the year '2003' was altered to '2013,' but did not imply this was the reason for dishonouring the cheque. His claim that the cheque was issued in 2003 lacks documentary evidence.

23. As rightly contended by the learned counsel for the complainant, the printed '200....' does not prohibit usage in 2010 or later. There is no evidence the cheque originally bore the date '22.10.2003.' Given this, the alleged alteration from '200...' to '2013' does not amount to material alteration, especially since the bank did not refuse to honour the cheque due to this alteration.



24. The learned Counsel for the accused would then mainly contend that there was no service of statutory notice on the accused since the address shown in Ex.P.4 – postal cover is not the address of the accused. However, Exs.P.3 and P.4 show the accused's address as 53, Subbaraja Madam Street, Madasamy Kovil Street, Rajapalayam Town. The postal cover under Ex.P.4 was returned with the endorsement “Door locked, intimation served” and “unclaimed”.

25. The main contention of the accused is that he resides at Door No.50-C/4, Subbaraja Madam Street, Rajapalayam, but the complainant knowingly sent the statutory notice to a wrong address, resulting in no service. Notably, the complainant mentioned the same address in his complaint filed under Section 138 NI Act. The summons sent to the accused was returned as “unclaimed,” prompting the complainant to file a petition under Section 87(2) Cr.P.C., which was allowed. The learned Magistrate observed that the accused was evading court proceedings and issued a bailable warrant.

26. The bailable warrant was returned unserved, with the police reporting the accused's absence. The learned Magistrate, upon the complainant's application, found the accused was evading court process and issued a Non-Bailable Warrant. When this too was returned unserved, the complainant filed an application under Section 82(1) Cr.P.C., leading to a proclamation order on



04.04.2014, with the matter adjourned to 09.05.2014. Meanwhile, the accused surrendered on 15.04.2014 and was released on bail.

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27. As rightly pointed out by the learned Counsel for the accused, the police reported that the accused was not available at the address shown by the complainant, but the learned Magistrate not accepting the police version, allowed the applications filed by the complainant and proceeded to issue a bailable warrant, non-bailable warrant and subsequently, a proclamation order. Thereafter the accused has surrendered before the Court.

28. The learned Counsel for the accused would rely on a decision of this Court in ***R.Manukumar Vs. M.Selvaraj in Crl.O.P.(MD)NO.3770 of 2017, dated 30.10.2018***, wherein this Court has observed as follows:

“8. It is seen from records that the statutory notice has not been sent to the correct address of the petitioner. Both in the statutory notice as well as the complaint, no specific address has been mentioned except the mentioning of the road as “Tamil Sangam” road. Without any door number or name of the street. The allegation made in the complaint itself reveals that the notice was returned for the reason “Insufficient Address”.



29. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***K.Bhaskaran Vs. Sankaran Vaidhyan Balan and another*** reported in ***1999 Supp(3) SCR 271***, wherein the Hon'ble Apex Court has dealt with service of statutory notice contemplated under Section 138 of the Negotiable Instruments Act and the relevant passages are extracted hereunder:

"It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him, [vide Harcharan Singh v. Smt. Shivrani and Ors., [1981] 2 SCC 535, and Jagdish Singh v. Natthu Singh, [1992] 1 SCC 647.] Here the notice is returned as unclaimed and not as refused. Will there be any significant different between the two so far as the presumption of service is concerned? In this connection a reference to Section 27 of the General Clauses Act will be useful. The Section reads thus :

"27. Meaning of service by post. - Where any central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post"



No doubt Section 138 of the Act does not require that the notice should be given only by 'post'. Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has despatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice.

Thus, when a notice is returned by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in clause (c) to the proviso of Section 138 of the Act. Of course such reckoning would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. In the present case the accused did not even attempt to discharge the burden to rebut the aforesaid presumption.”

30. It is also necessary to refer the judgment of the three Judges Bench of the Hon'ble Supreme Court in ***C.C.Alavi Haji Vs. Palapetty Muhammed and another*** reported in ***AIR 2007 SC (SUPP) 1705***, wherein the Hon'ble Apex Court while answering the reference pertaining to the question of service of notice in terms of Clause (b) of proviso to [Section 138](#) of the Negotiable Instruments Act, has held as follows:



“Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement refused or not available in the house or house locked or shop closed or addressee not in station, due service has to be presumed. [Vide Jagdish Singh Vs. Natthu Singh; State of M.P. Vs. Hiralal & Ors. and V.Raja Kumari Vs. P.Subbarama Naidu & Anr.] It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.”

31. In the present case, the complainant has specifically averred in the complaint that he sent a legal notice dated 31.10.2013 to the accused, who deliberately avoided receiving it, resulting in its return. Ex.P.3 notice was returned with endorsements “Door locked, intimation served” and “unclaimed.”



The complainant produced the notice (Ex.P.3) and postal cover (Ex.P.4) as evidence and testified to the same as P.W.1.

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32. Given these circumstances, the burden lies on the accused to rebut the presumption of notice service. The accused must demonstrate lack of knowledge about the notice or prove the address was incorrect or the letter was never tendered or the postal report was erroneous. Although the accused claims residence at Door No.50-C/4, Subbaraja Madam Street, Rajapalayam, no evidence supports his residence at that address during the relevant period.

33. The accused has not claimed that he never resided at Door No.53, Subbaraja Madam Street, Madasamy Kovil Street, Rajapalayam, at any point. Notably, both addresses share the same street names, with only the door number differing. The postal cover was returned with endorsements “Door locked, intimation served” and “unclaimed,” rather than “no such person” or “incomplete address.” The accused has not taken steps to challenge the postman's endorsement, which further supports the presumption of service.

34. At this juncture, it is necessary to refer the following passages in **C.C.Alavi Haji's** case referred supra, which are extracted hereunder:

“16. As noticed above, the entire purpose of requiring a notice is to give an opportunity to the drawer to pay the cheque



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amount within 15 days of service of notice and thereby free himself from the penal consequences of [Section 138](#). In [Vinod Shivappa](#) (supra), this Court observed:

One can also conceive of cases where a well intentioned drawer may have inadvertently missed to make necessary arrangements for reasons beyond his control, even though he genuinely intended to honour the cheque drawn by him. The law treats such lapses induced by inadvertence or negligence to be pardonable, provided the drawer after notice makes amends and pays the amount within the prescribed period. It is for this reason that Clause (c) of proviso to [Section 138](#) provides that the section shall not apply unless the drawer of the cheque fails to make the payment within 15 days of the receipt of the said notice.

To repeat, the proviso is meant to protect honest drawers whose cheques may have been dishonoured for the fault of others, or who may have genuinely wanted to fulfil their promise but on account of inadvertence or negligence failed to make necessary arrangements for the payment of the cheque. The proviso is not meant to protect unscrupulous drawers who never intended to honour the cheques issued by them, it being a part of their modus operandi to cheat unsuspecting persons.

17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under [Section 138](#) of



*the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under [Section 138](#) of the Act, cannot obviously contend that there was no proper service of notice as required under [Section 138](#), by ignoring statutory presumption to the contrary under [Section 27](#) of the G.C. Act and [Section 114](#) of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskarans case (*supra*), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of [Section 138](#) of the Act.”*

35. In the present case, the accused surrendered before the Court on 15.04.2014 after the proclamation order and was released on bail. Notably, the accused failed to pay the amount within 15 days of entering appearance. Given the legal position, the accused cannot claim improper service of notice under Section 138 of the Negotiable Instruments Act, especially in light of the statutory presumptions under Section 27 of the General Clauses Act and Section 114 of the Evidence Act.



36. Considering the above, this Court is of the clear view that the accused has miserably failed to rebut the presumption in favour of the complainant under Section 118 and 139 of the Negotiable Instruments Act. The learned Judicial Magistrate erred in giving undue importance to irrelevant aspects and overlooking key points. Consequently, the impugned judgment is liable to be set aside. This Court concludes that the accused is guilty of the offence under Section 138 of the Negotiable Instruments Act.

37. Now turning to the punishment to be awarded, the Hon'ble Supreme Court in *M/s Meters and Instruments Private Limited and another Vs. Kanchan Mehta* reported in (2017)3 MWN (CrI) DCC 161 SC, has observed that the offence under Section 138 of the Negotiable Instruments Act related to a civil wrong and the same was a regulatory offence and that the object was described as punitive as well as compensatory. It is very much clear that the intention of the provision is not only to punish the accused, but at the same time, the aggrieved party is to be compensated.

38. Considering the nature of the offence and also the quantum of the cheque amount, this Court awards simple imprisonment for one year and to pay compensation of Rs.10,00,000/-. (Rupees Ten Lakhs only) in default to undergo



simple imprisonment for three months. The accused shall deposit the compensation amount and surrender before the trial court within one month from the date of receipt of this judgment, failing which the Magistrate shall take coercive steps to enforce the sentence.

39. The Criminal Appeal is accordingly allowed.

25.10.2025

Index : Yes/No

Internet : Yes/No

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To

1. The Judicial Magistrate, Fast Track Court, (Magisterial Level),
Srivilliputhur.
2. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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CRL.A.(MD).No.761 of

K.MURALI SHANKAR, J.

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PRE-DELIVERY JUDGMENT MADE IN

CRL.A(MD).No.761 of 2022

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